

**Senate Bill No. 1816**

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Passed the Senate      August 30, 2002

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*Secretary of the Senate*

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Passed the Assembly      August 26, 2002

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*Chief Clerk of the Assembly*

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This bill was received by the Governor this \_\_\_\_\_ day of  
\_\_\_\_\_, 2002, at \_\_\_\_\_ o'clock \_\_M.

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*Private Secretary of the Governor*

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## CHAPTER \_\_\_\_\_

An act to add Chapter 1.76 (commencing with Section 5097.995) to Division 5 of the Public Resources Code, relating to historical resources.

## LEGISLATIVE COUNSEL'S DIGEST

SB 1816, Chesbro. Historical resources: Native American sacred sites: violations.

(1) Existing law prohibits a public agency, or a private party using or occupying public property, or operating on public property, under a public license, permit, grant, lease, or contract made on or after July 1, 1977, from in any manner interfering with the free expression or exercise of Native American religion as provided in the United States Constitution and the California Constitution, or from causing severe or irreparable damage to any Native American sanctified cemetery, place of worship, religious or ceremonial site, or sacred shrine located on public property, except on a clear and convincing showing that the public interest and necessity so require.

This bill would establish the Native American Historic Resource Protection Act, which would provide that any person who unlawfully and maliciously excavates upon, removes, destroys, injures, or defaces a Native American historic, cultural, or sacred site that is listed or may be listed in the California Register of Historic Resources, including any historic or prehistoric ruins, burial ground, any archaeological or historical site, any inscriptions made by Native Americans at the site, any archaeological or historic Native American rock art, or any archaeological or historic feature is guilty of a misdemeanor if the act was committed with the specific intent to vandalize, deface, destroy, steal, convert, possess, collect, or sell a Native American art object, inscription, or feature, or site and the act occurs on public land or, if on private land, is committed by a person other than the landowner, as described. The bill would subject a person found guilty of the violation to imprisonment in the county jail for up to one year, by a fine not to exceed \$10,000, or by both that fine and imprisonment. By creating a new crime, the bill would impose a state-mandated local program. The bill would also subject a



person found guilty of a violation of those provisions to a civil penalty in an amount not to exceed \$50,000 per violation. The bill would require that all civil penalties collected pursuant to this provision as a result of an enforcement action brought by a city or county be distributed to the city or county treasurer of the city or county that brought the action. The bill would require the moneys to be utilized first to repair or restore the damaged site and would require the remaining moneys to be available to the city or county to offset enforcement costs.

The bill would require all civil penalties collected as a result of an action by the Attorney General to be first distributed to, and utilized by, the Native American Heritage Commission to repair or restore the damaged site. The bill would require the remaining moneys to be available to the Attorney General to offset enforcement costs.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

*The people of the State of California do enact as follows:*

SECTION 1. The Legislature finds and declares all of the following:

(a) Native American burial sites and Native American cultural resources have always been, and will continue to be, considered sacred to California Native Americans.

(b) California Native American sacred cultural resources and burial sites have been continuously looted and destroyed by grave robbers and people wanting to sell sacred and cultural artifacts.

(c) California Native American sacred sites are nonrenewable and need additional protection.

(d) California Native American tribes have demonstrated ancestral affiliation to Native American burial sites and historical and cultural resources.

(e) The United States Government and many western states, including California, have realized the need for protection of Native American burial sites and cultural resources and have



enacted laws to reflect this awareness with more stringent legal enforcement and penalties for desecration of Native American sacred sites.

(f) Legislation is needed to provide the additional legal protection for Native American burial and cultural sites, art, and other cultural artifacts found at those sites.

(g) Legislation is needed to provide additional legal protection for Native American historical and cultural sites, art, and other cultural artifacts found at those sites, if that protection for Native American cultural resources found on private lands is consistent with constitutionally protected property rights of the persons who own the land on which they are found.

(h) Consistent with Sections 5020.7 and 5097.94 of the Public Resources Code, in order to encourage collaborative relationships for the protection of Native American cultural resources between Native Americans and landowners, funding and other state assistance should be encouraged for support of voluntary agreements to conserve, maintain, and provide physical access for Native Americans to these cultural resources.

SEC. 2. Chapter 1.76 (commencing with Section 5097.995) is added to Division 5 of the Public Resources Code, to read:

CHAPTER 1.76. NATIVE AMERICAN HISTORIC RESOURCE  
PROTECTION ACT

5097.995. (a) (1) Any person who unlawfully and maliciously excavates upon, removes, destroys, injures, or defaces a Native American historic, cultural, or sacred site, that is listed or may be eligible for listing in the California Register of Historic Resources pursuant to Section 5024.1, including any historic or prehistoric ruins, any burial ground, any archaeological or historic site, any inscriptions made by Native Americans at such a site, any archaeological or historic Native American rock art, or any archaeological or historic feature of a Native American historic, cultural, or sacred site is guilty of a misdemeanor if the act was committed with specific intent to vandalize, deface, destroy, steal, convert, possess, collect, or sell a Native American historic, cultural, or sacred artifact, art object, inscription, or feature, or site and the act was committed as follows:

(A) On public land.



(B) On private land, by a person, other than the landowner, as described in subdivision (b).

(2) A violation of this section is punishable by imprisonment in the county jail for up to one year, by a fine not to exceed ten thousand dollars (\$10,000), or by both that fine and imprisonment.

(b) This section does not apply to any of the following:

(1) Any act taken in accordance with, or pursuant to, an agreement entered into pursuant to subdivision (l) of Section 5097.94.

(2) Any action taken pursuant to Section 5097.98.

(3) Any act taken in accordance with the California Environmental Quality Act (Division 13 (commencing with Section 21000)).

(4) Any act taken in accordance with the National Environmental Policy Act of 1969 (42 U.S.C. Sec. 4321 et seq.).

(5) Any act authorized under the Z'berg-Nejedly Forest Practice Act of 1973 (Chapter 8 (commencing with Section 4511) of Part 2 of Division 4).

(6) Any action taken with respect to a conservation easement in accordance with Chapter 4 (commencing with Section 815) of Division 2 of the Civil Code, or any similar nonperpetual enforceable restriction that has as its purpose the conservation, maintenance, or provision of physical access of Native Americans to one or more Native American historic, cultural, or sacred sites, or pursuant to a contractual agreement for that purpose to which most likely descendents of historic Native American inhabitants are signatories.

(7) Any otherwise lawful act undertaken by the owner, or an employee or authorized agent of the owner acting at the direction of the owner, of land on which artifacts, sites, or other Native American resources covered by this section are found, including, but not limited to, farming, ranching, forestry, improvements, investigations into the characteristics of the property conducted in a manner that minimizes adverse impacts unnecessary to that purpose, and the sale, lease, exchange, or financing of real property.

(8) Research conducted under the auspices of an accredited postsecondary educational institution or other legitimate research institution on public land in accordance with applicable permitting



requirements or on private land in accordance with otherwise applicable law.

5097.996. (a) Each person who violates subdivision (a) of Section 5097.995 is subject to a civil penalty not to exceed fifty thousand dollars (\$50,000) per violation.

(b) A civil penalty may be imposed for each separate violation of subdivision (a) in addition to any other civil penalty imposed for a separate violation of any other provision of law.

(c) In determining the amount of any civil penalty imposed pursuant to this section, the court shall take into account the extent of the damage to the resource. In making the determination of damage, the court may consider the commercial or archaeological value of the resource involved and the cost to restore and repair the resource.

(d) A civil action may be brought pursuant to this section by the district attorney, the city attorney, or the Attorney General, or by the Attorney General upon a complaint by the Native American Heritage Commission.

(e) (1) All moneys collected from civil penalties imposed pursuant to this section as a result of an enforcement action brought by a city or county shall be distributed to the city or county treasurer of the city or county that brought the action. These moneys shall be first utilized to repair or restore the damaged site, and the remaining moneys shall be available to that city or county to offset costs incurred in enforcing this chapter.

(2) All moneys collected from civil penalties imposed pursuant to this section as a result of an enforcement action brought by the Attorney General shall be first distributed to, and utilized by, the Native American Heritage Commission to repair or restore the damaged site, and the remaining moneys shall be available to the Attorney General to offset costs incurred in enforcing this chapter.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.



Approved \_\_\_\_\_, 2002

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*Governor*

